IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

First Appeal No.l463 of 2005

Suresh Narayan Devrukhkar ..Appellant
vs
Mun Corporation of Gr Bombay...Respondents
Mr Nitin V Gangal for appellant
Mr A J Bhoir for respondent no.l
Mr. M.Teer for respondent no.2

CORAM: Anoop.V.MOHTA J.

Dated l9.ll .2005

P.C:

l. Heard the learned counsel for the parties.

2. Present first appeal has been preferred by the plaintiff whose basic suit was for a declaration that the notice dated l5.5.l997 issued by the respondent-Municipal Corporation, Greater Bombay was illegal, null, void and improper and therefore also sought an order of injunction.

3. By order dated l4.7.l999 in A.O.No.6l3 of l999 which was filed by the appellant this Court has disposed of the said appeal. The relevant portion of the said order is as follows:

> "...That is however, with a rider that the appellant will confine his stall to the size

> of l m x l m and will open it towards the footpath as against the main road where he is having the present opening. He will do the needful and inform the concerned officer within 4 weeks from today, failing which the respondents will be at liberty to take action to remove the stall. This is also subject to whatever is the decision arrived at the end of the suit".

It is therefore clear that the aforesaid order was subject to a final decision of the suit in the suit.

4. The learned Judge by the impugned order dated 9.8.2002 while dismissing the suit observed as under:

> "...On 25.6.2002 learned advocate for plaintiff stated that extended area is removed by plaintiff and present structure at the site is as per the condition and demarcation mentioned in the licence. On the next date there is no statement from the plaintiff. Form above facts, it is clear, that plaintiff is not interested in the

matter as extended portion is already removed..."

On the same date the advocate for the plaintiff requested for restoration of the suit and that application was also rejected by observing that "the plaintiff has made a statement in this Court that the extended portion of the stall is removed" "nothing survives in the matter,and request of the plaintiff to restore the suit to its original position is wastage of time", thereby not adjudicated rights between the parties.

5. Rule 3 Order 2 of the Code of Civil Procedure (CPC) provides that the court should pronounce the judgement on all issues. Admittedly, in the present case the issues were framed. However, based on the above statement as recorded above and as observed by the court the present suit itself was disposed of. The order passed by this court on l4.7.l999 is very clear that it was subject to the decision of the suit. The suit cannot be disposed of unless consented by the plaintiff to that effect. The plaintiff is not willing to accept the observation as above at the interlocutory stage and admittedly as it was subject to final decision of

the suit. Therefore there is no question of the disposal of the suit like the present one. I am of the view that as the issues were already framed, it is necessary for the court to dispose of the suit on merits on all issues. All points are kept open. Parties are at liberty to file an appropriate application before the trial court for appropriate reliefs including against the BEST for electricity supply. In view of the this judgment and order dated 9.8.2002 is quashed and set aside. The matter is remanded back to the regular City Civil Court, Bombay. First appeal is disposed of accordingly.

. Civil Application no.4220 of 2005 does not survive and hence stands disposed of.